

**MINUTES
FOR THE REGULAR MEETING
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5461**

1. Opening of Meeting:

The Appeals Board convened at 4:00pm, September 28, 2005 in Long Beach, with Chair Cynthia K. Thornton presiding.

2. Roll Call: Members

Present

Absent

Cynthia K. Thornton, Chair
Ann Richardson, Vice Chair
Virginia Strom-Martin
Jack Cox

x
x
x
x

3. Approval of the Minutes:

The September 6, 2005 minutes were approved by all members.

4. Chair's Report:

Chair Thornton reported that she attended the National Association of Unemployment Insurance Appellate Boards meeting in New York. The next meeting is planned for June of 2006, and it will be held in San Diego. CUIAB staff will be in charge of the program.

Chair Thornton also commented that the Board was fortunate to have Labor Secretary Victoria Bradshaw as the keynote speaker at the Judicial Conference.

5. Board Member Reports:

Vice Chair Richardson complimented everyone involved with the planning, organization and execution of the conference. She also complimented the ALJs for all of their hard work. She commended Chair Thornton and expressed her hope that Chair Thornton is reappointed.

Member Strom-Martin reiterated Vice Chair Richardson's comments and went on to say how wonderful it is to be in Long Beach and meet with the ALJs. She also commented on how much she has enjoyed working with Chair Thornton and hopes that her reappointment efforts are fruitful.

Member Cox echoed what the two previous Board Members' comments about Chair Thornton. He also complimented the crew that put on the Judicial Conference and the Administrative Law Judges Forum. He stated that it has been a real pleasure to be a part of the CUIAB.

6. Chief Administrative Law Judge/Executive Director's Report:

Executive Director/Chief Administrative Law Judge Jay Arcellana expressed his thanks to Labor Secretary Vicki Bradshaw for taking the time out of her busy schedule to attend our Judicial Conference.

Executive Director/Chief Administrative Law Judge Jay Arcellana reported that the digital recording pilot is about to get under way, starting first in Pasadena and then moving to San Francisco.

Executive Director/Chief Administrative Law Judge Jay Arcellana informed the Board that the October revise is pending review and approval by the Labor Agency and Finance.

Executive Director/Chief Administrative Law Judge Jay Arcellana reported that the workload forecasts for the Unemployment Insurance program project 250,890 cases closed in the current fiscal year. This is a decrease of 29,700 cases from that forecasted in the May 2005 revise. The current year budget for UI will be reduced by 73.1 PY's and \$3,839,725 as a consequence.

The forecast for the Disability Insurance program is 24,590 cases, down 1,770 cases from the May 2005 revise. The DI budget will be reduced by 4.6 PY's and \$225,878.00.

For budget year 2006-2007 Executive Director/Chief Administrative Law Judge Jay Arcellana reported the workload forecast for the Unemployment Insurance Program is 230,400 cases, an increase of 4,100 cases forecasted in the October 2005 revise.

The budget year 2006-2007 workload forecast for Disability Insurance is 25,120 cases, an increase of 530 cases over that forecasted in the October 2005 revise.

Executive Director/Chief Administrative Law Judge Jay Arcellana reported that one of the factors proposed by CUIAB is the inclusion of un-calendared cases in order to capture the entire workload to be processed. As of August 2005, the total number of un-calendared weeks for the UI and DI programs is at 5.58 weeks, the second highest level for the year with 19,212 cases pending to be calendared. This additional workload is pending review and approval by Labor Agency and the Department of Finance for inclusion in the October Revise.

Additionally, EDD has a backlog of benefit audit wage cross-match activity which is projected to generate 18,000 benefit audit overpayment appeals.

7. Branch Reports:

- a. Executive Director/Chief Administrative Law Judge Arcellana reported on several personnel matters: Charlie Jackson, LSS II in Oakland is retiring;

Eleanor Nisperos will be the new PJ over Field Operations Headquarters; and the Agency will be conducting a spot examination to fill the vacant PALJ position in Oxnard, as there was just one applicant for that position, and that person did not meet the eligibility requirements.

Executive Director/Chief Administrative Law Judge Arcellana reflected that the previous Judicial Conference/ALJA Forum was May 20-24, 2003 in Palm Springs. ALJ attritions since May 2001 were 14 retirements in 2001-02, 6 retirements in 2002-03, 4 retirements in 2003-04 and 23 retirements in 2004-05 for a total of 47 retirements. There have been 85 new hires since May 2001 with 26 in 2001-02, 14 in 2002-03, 15 in 2003-04 and 30 in 2004-05.

PALJ Hugh Harrison reported that the tax back log in the field has been reduced by 47%, quite a significant achievement.

PALJ Harrison stated that a great deal of the Agency's ability to deal with its workload can be credited to the creation of the ALJ II class. A large number of our judges have been promoted from ALJ I to ALJ II. The history of the class is as follows: February 14, 2003 was the first final filing date for the ALJ II class, and the exam was given March 20, 2003. 101 candidates were on the list and 100 of them accepted promotions. 56 of those were permanent full time and 44 were limited term. The second final filing date was February 11, 2005 and the exam was given March 1, 2005. 53 candidates took the exam and 50 accepted promotions. Field Operations now has 119 ALJ IIs and 44 ALJ Is for a total of 163 judges. Appellate Operations has 15 ALJ IIs and 3 ALJ Is for a total of 18 judges.

Vice Chair Richardson inquired about the benefit audit cases and how far back they will go. Hugh Harrison replied that they were not going back, but rather they are cases currently pending on which EDD is now moving forward.

- b. Deputy Chief ALJ, Appellate Operations Steve Angelides reported that in August registrations returned to a more normal 1624 cases after a dip in May, June and July. The dispositions were still below average at 1375, which tracks the dip in registrations in June when many of the cases closed in August were registered. Looking ahead using that approach, we can expect low dispositions again in September, hopefully followed by an upturn in dispositions in October. We've continued to have number of ALJs on special assignments in August and September, which has worked out well since the resources we've been devoting to the routine workload have essentially matched that workload.

Deputy Chief ALJ, Appellate Operations Steve Angelides also reported that aside from these typical ebbs and flows of routine work, the most notable trend in August was the relentless rapid growth of tax cases being appealed. In August 63 new tax cases were registered, which is about six times the number of tax cases registered in January of this year. At the end of August, Appellate Operations had 159 open tax cases, compared to 59 open tax cases at the end

of January. In part the recent growth in tax cases is due to increasing numbers of dispositions in the field as it catches up on its tax back log. But the appeal rate in tax cases has also been sky rocketing. In August, the appeal rate in tax cases reached a whopping 27.4%, compared to a typical UI and DI appeal rate of around 7%, and an average tax appeal rate of around 12%.

Deputy Chief ALJ, Appellate Operations Steve Angelides went on to report that that the average case age at Appellate Operations continued to fall and is now down to 38 days, which is lowest this year. The median case age remained steady at 34 days, which is the same as July, and also still the lowest of this year. These numbers are expected to rise in October when Appellate Operations will have a relatively large number of older cases, many of which were registered in August, and because of the loss of a weeks worth of production due to attending the conferences.

Finally, Deputy Chief ALJ, Appellate Operations Steve Angelides reported that he had previously announced the upcoming retirements of ALJs Mike Canar and Tamara Pierson in December, but he felt the need to announce them again to a larger audience. And to publicly acknowledge the dedicated professionalism of Mike and Tamara, who were in attendance at their last Judicial Conference. He stated that they will be missed very much as regular ALJs but look forward to having them continue to help as retired annuitants, especially since they will not be replaced. Deputy Chief ALJ, Appellate Operations Steve Angelides also thanked Chair Thornton for her outstanding service to our agency as she nears the end of this term, and for her support of him in his previous position as Training Officer and Presiding ALJ in Oakland, and in his new position as Deputy Chief ALJ of Appellate Operations. Having a strong, confident, intelligent, hard working and thoughtful leader like Cynthia has made his work immeasurably easier and immeasurably richer.

- c. Deputy Director, Administrative Services Branch Pam Boston reflected on a few of Administrative Services accomplishments for fiscal year 2004/2005 and the first part of this current fiscal year.

In the fiscal year 2004/2005 Business Services processed 55 contracts; 9 new leases/renewals/extensions and 1 hearing facility closure. They conducted the physical inventory for state-owned equipment and property at 72 CUIAB facilities consisting of 15,000 items; initiated 434 purchase orders for equipment, supplies and maintenance agreements; 1,103 cal-card orders for office supplies; 259 service transaction authorizations; lowered the price of our existing copier maintenance agreements saving the CUIAB almost \$31,000 a year; currently negotiating leases for 16 appeals offices and hearing sites for either new leases or lease renewals; upgraded security systems for Sacramento, San Jose, San Francisco, and Stockton hearing facilities.

Deputy Director, Administrative Services Branch Pam Boston went on to report that in the same fiscal years, Personnel Services provided attendance clerk

training in several offices; the CUIAB had 35 retirements since July 2004 including five ALJ I and 14 ALJ IIs. Exams during the calendar year included 60 Administrative Law Judge Is upgraded to Administrative Law Judge IIs; Associate Government program Analyst; Associate Information Systems Analyst; Associate Personnel Officer II; Senior Information Systems Analyst; Staff Counsel II; Staff Information Systems Analyst; and Staff Services Manager II. A total of 11 exams have been completed, 3 are nearing completion and 3 remain. The CUIAB also participated in the American Heart Walk honoring Mike DiSanto; 22 employees participated in the walk and raised \$2,740. Deputy Director, Administrative Services Branch Pam Boston thanked Kim Langan and the team leaders.

Deputy Director, Administrative Services Branch Pam Boston further reported that Information Technology Branch installed Britemail e-mail anti-spamming technology, reducing spam e-mail by 90%; designated and developed in-house help desk support tracking system improving response times by 50%; deployed over 100 new workstations to offices through the State; installed new phone systems in Inglewood and Los Angeles; discovered, contained, and recovered from a major virus attack with minimal impact; upgraded various servers throughout the CUIAB. And they are looking forward to another busy year.

- d. Deputy Director, Planning and Program Management Branch Mary Walton-Simons reported on an overview of P&PM Branch accomplishments. She recognized Renee Erwin, as the budget officer, who has coordinated CUIAB's budget call letter process, and noted that the agency will be entering into its eighth budget call letter year. She announced that the Bilingual Services Coordinator, Martha Silva, through the auditing of interpreter forms, has produced significant savings in our interpreter costs. Under the leadership of Ralyne Long, the CUIAB has its first formal Strategic Plan approved by the Board this year. One of the outcomes of the Strategic Plan was the audit conducted by the CHP of our hearing facilities. Under the management of the Workload Unit, Martha Diaz has coordinated and assisted PALJs and ALJs through major trade disputes this year.

The P&PM Branch also conducted the first in-person Customer Satisfaction Survey. They were requested to conduct a Customer Survey for the purpose of gathering an unbiased view of how CUIAB customers regard our appeals process. The customers are surveyed because it is the customer who defines the quality of our service; not CUIAB, the deliverer of the service. The survey was conducted in two-week phases during the month of August. All twelve Offices of Appeals were surveyed. The surveys were conducted in an anonymous format to encourage free and honest responses. The Strategic Planning staff of the P&PM Branch coordinated this project under the lead of Ralyne Long and ensured the surveys were handled in a confidential manner.

Deputy Director, Planning and Program Management Branch Mary Walton-Simons stated that a P&PM staff was assigned to each office to monitor the lobby areas and the survey boxes. The surveys were placed in locked boxes.

The surveys were mailed in confidential envelopes by the P&PM staff to the P&PM headquarters in Sacramento. At that point, all identifying information was blacked-out on the surveys, i.e. case number, ALJ name, parties name or SSA numbers. The data was entered into a survey database to provide Quantitative Data results. The Qualitative data was obtained from the "comments" section of the survey form and is being analyzed separately by P&PM staff.

Deputy Director, Planning and Program Management Branch Mary Walton-Simons went on to report that over 2,600 survey forms were completed. This represents a return rate of 74% of all surveys distributed. Of the 74% returned, over 94% were considered completed, usable data. The duration of the survey and the quality of the surveys collected represents a legitimate sampling.

The methodology used was a 5-point Likert Scale with eight closed-ended statements. The following are the results of the Quantitative part of the survey for each close-ended statement. The percentages for Strongly Agree and Agree were combined, and the percentages for Strongly Disagree and Disagree were combined. The survey questions and results are as follows:

Question one was 'The hearing information pamphlet I received with my Hearing Notice was helpful and informative.' 82% strongly agreed or agreed. 15% were neutral and 3% strongly disagreed or disagreed. Question 2 was 'the hearing office reception staff was courteous and helpful.' 95% strongly agreed or agreed. 5% were neutral and 0% strongly disagreed or disagreed. Question three was, 'I was allowed plenty of time to review the documents in the file.' 93% strongly agreed or agreed. 5% were neutral and 2% strongly disagreed or disagreed. Question four was, 'The Administrative Law Judge explained what would happen during the hearing.' 96% strongly agreed or agreed. 3% were neutral and 1% strongly disagreed or disagreed. Question five was, 'The Administrative Law Judge treated me fairly at the hearing.' 95% strongly agreed or agreed. 4% were neutral and 1% strongly disagreed or disagreed. Question six was, 'The Administrative Law Judge was courteous.' 95% strongly agreed or agreed. 4% were neutral and 1% strongly disagreed or agreed. Question seven was, 'The Administrative Law Judge gave me enough time to present my case.' 95% strongly agreed or agreed. 3% were neutral and 2% strongly disagreed or disagreed. Question eight was, 'Overall, I thought the hearing process was fair.' 91% strongly agreed or agreed. 7% were neutral and 2% strongly disagreed or disagreed.

8. Chief Counsel's Report:

Chief Counsel Ralph Hilton began his report by advising that his litigation and workload reports were located in the Board member packets, and that since he had covered those materials at the Judicial Forum the day before, he would not be repetitious. (Attachments A and B)

Chief Counsel Ralph Hilton stated he would like to take the opportunity to comment on the culture of the CUIAB. He stated that he had worked for a few state agencies in his career, and had the opportunity to closely observe the workings of other

state agencies. Against that backdrop it is his opinion that CUIAB has by far the most supportive management team. He highlighted the promotional opportunities, working conditions, and the working facilities offered by that management team, which better enable the judges to do their jobs. He stated that the CUIAB is truly unique among state agencies in this regard. Chief Counsel Ralph Hilton went on to thank Jay Arcellana for putting on the conference in Long Beach as opposed to the Desert in the middle of summer.

9. Unfinished & New Business:

A power point presentation was given regarding digital recording. (Attachment C)

Chief Counsel Ralph Hilton announced that cases AO-11365 & AO-11366 were taken off of the agenda because they were ready for consideration for precedent designation.

In the matter of AO-114803. Chief Counsel Ralph Hilton presented an overview of the case. The decision deals with whether or not a claimant has good cause to quit if it is not economically feasible for him/her to keep working.

Member Cox moved to adopt this decision as a precedent and Member Strom-Martin seconded it. The motion was unanimously carried.

10. Public Comment:

There was no public comment. (Lou Sotelo started to say something but the recorder got shut off.)

11. Closed Session:

The regularly scheduled Board meeting adjourned, and the Board did not go into closed session.

| Board Member | 1st Member | 2nd Member | 3rd Member | UI | DI | Ruling | Tax | 1 Party | 2 Party | Total |
|-----------------------|------------|------------|------------|------|-----|--------|-----|---------|---------|-------|
| Ann Richardson | | | | | | | | | | |
| Sum | 184 | 187 | 2 | 318 | 47 | 0 | 8 | 145 | 228 | 373 |
| Percent | 25% | 25% | 0% | 43% | 6% | 0% | 1% | 19% | 30% | |
| Cynthia Thornton | | | | | | | | | | |
| Sum | 163 | 162 | 1 | 278 | 44 | 1 | 3 | 125 | 201 | 326 * |
| Percent | 22% | 22% | 0% | 37% | 6% | 0% | 0% | 17% | 27% | |
| Jack Cox | | | | | | | | | | |
| Sum | 207 | 166 | 0 | 323 | 42 | 1 | 7 | 131 | 242 | 373 |
| Percent | 28% | 22% | 0% | 43% | 6% | 0% | 1% | 18% | 32% | |
| Virginia Strom-Martin | | | | | | | | | | |
| Sum | 156 | 106 | 1 | 231 | 27 | 0 | 5 | 89 | 174 | 263 * |
| Percent | 21% | 14% | 0% | 31% | 4% | 0% | 1% | 12% | 23% | |
| Total Cases Reviewed: | 710 | 621 | 4 | 1150 | 160 | 2 | 23 | 490 | 845 | |

LITIGATION CASES PENDING

TOTAL: 122

September 2005

Non-Benefit Cases: 3

New Cases Filed This Month: 5

Cases Closed This Month: 0

| | | | |
|-------------------------|--------------------------|-----|-----|
| SUPERIOR COURT: | Claimant petitions | 100 | |
| | Employer petition | 15 | |
| | EDD petitions | 0 | 115 |
| APPELLATE COURT: | Claimant appeals | 3 | |
| | Employer appeals | 1 | |
| | EDD appeals | 0 | 4 |

2005 Activity Summary

| | | | |
|----------------------------------|--------------------------|----|----|
| FILED - SUPERIOR COURT: | Claimant petitions | 31 | |
| | Employer petitions | 9 | |
| | EDD petitions | 0 | 40 |
| FILED - APPELLATE COURT: | Claimant appeals | 1 | |
| | Employer appeals | 1 | |
| | EDD appeals | 0 | 2 |
| CLOSED - SUPERIOR COURT: | | | 35 |
| CLOSED - APPELLATE COURT: | | | 2 |

2005 Decision Summary

Claimant Appeals

Win: 6 Loss: 23

Employer Appeals

Win: 3 Loss: 5

CUIAB Decisions

Affirmed: 30 Reversed: 6 Remanded: 1